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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/294,630	04/19/1999	SHINJI UEBAYASHI	3815/76	6344

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EXAMINER

DUONG, DUC T

ART UNIT PAPER NUMBER

2663

DATE MAILED: 10/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/294,630

Applicant(s)

UEBAYASHI ET AL.

Examiner

Duc T. Duong

Art Unit

2663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 5-8 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7, 8, 18 and 19 is/are allowed.
- 6) ☒ Claim(s) 5, 6, 16 and 17 is/are rejected.
- 7) ☒ Claim(s) 20 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5 & 10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of 5-8 and 16-21 in Paper No. 12 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Objections***

2. Claims 20 and 21 are objected to because of the following informalities: the claims are dependent upon cancellation claims 12-15. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 recites the limitation "threshold detector" on line 20. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5, 6, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Behtash et al (U.S. Patent 5,745,480) in view of Felix et al (U.S. Patent 5,946,356).

Regarding to claims 5 and 16, Behtash discloses a base station 102 (Fig. 1) that simultaneously performs multiple CDMA communications with a plurality of mobile stations 104-106 at different rates (col. 3 lines 26-33), said base station comprising a detector 176 (Fig. 3), for detecting, in response to detection of the high speed communication by said high speed communication detector, whether transmission power of all high speed communications transmitted simultaneously or transmission power of all communications transmitted simultaneously exceeds a predetermined fixed value if the detected high speed communication is added (Fig. 4 col. 4 lines 41-67) and a controller 176 (Fig. 3) for controlling reception of the high speed communication request in response to detection by said threshold detector, wherein said controller rejects the high speed communication request if the transmission power of all high speed communications transmitted simultaneously or transmission power of all communications transmitted simultaneously exceeds the predetermined fixed value (Fig. 4 col. 5 lines 1-42). Examiner noted that the system controller 176 (Fig. 3) read on both the detector and controller.

Behtash fails to teach for a high speed communication detector for detecting, when receiving a communication request, whether a communication request is made for high speed communication with a transmission rate higher than a predetermined rate.

However, Felix discloses a communication system with a base station controller 101 for determining whether a high data rate transmission needs to place using one or more supplemental channel circuitry (Fig. 1 col. 3 lines 56-58).

Thus, it would have been obvious to one of ordinary skilled in the art, at the time of the invention, to includes a base station to detect high speed data transmission as taught by Felix in Behtash's system with the motivation to distinguish individual signal supporting different services.

Regarding to claims 6 and 17, Behtash discloses all the limitation with respect to claims 5 and 16, except for a holder for temporarily holding the communication request for an allowable time period in response to detection by said detector that its detection result is greater than the fixed value. However, Felix discloses the base station would hold the transmission of high data rate for a period of time if determines the current time is not less than the difference between the time when the supplemental channel circuitry will be available and the time take needed for accurate power control (Fig. 4 col. 7 lines 35-49). Thus, it would have been obvious to one of ordinary skilled in the art, at the time of the invention, to includes a hold for the transmission of high data rate as taught by Felix in Behtash's system with the motivation to establish an appropriate power transmit power level.

***Allowable Subject Matter***

7. Claims 7, 8, 18, and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Conclusion**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is 703-605-5146. The examiner can normally be reached on M-Th (8:30 AM-5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on 703-308-5340. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-9600.

DD  
September 27, 2002



Steven J. Huff  
9/27/02